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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,004	12/15/2003	Yi Feng Zheng	7459	2953

34500 7590 04/18/2007

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LEGAL DEPARTMENT
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EXAMINER	
HAQ, SHAFIQUL	
ART UNIT	**PAPER NUMBER**
1641	

MAIL DATE	DELIVERY MODE
04/18/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/736,004	**Applicant(s)** ZHENG ET AL.	
	Examiner Shafiqul Haq	**Art Unit** 1641	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *13,15-19,21,24,25,27,30 and 31*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

LONG V. LE 04/13/07
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Continuation of 11. does NOT place the application in condition for allowance because: Applicants arguments filed 3/15/07 have been fully considered, but they are nor persuasive to overcome the rejections under 35 USC 103 for the reason of record of pages 2-6 of 1/24/07 office action. Applicants argued that Avenia is concerned with conventional immunogenic carrier conjugates and there is no mention in Avenia for conjugates of labels and the haptens of the reference or conjugates of enzymes and the haptens of the reference. Applicants also argued that the label derivative that Avenia employs in the assay is a radioctive amphetamine analogs. Applicants further argued that there is no teaching or suggestion in Avenia to use label conjugates of his haptens in a assay method. These arguments are not found convincing for the reason as discussed in the office action of 1/24/07. Avenia et al. disclose activated hapten (see formula III) for conjugation of carrier protein to render the hapten immunogenic. Avenia et al. also disclose detection of phenathethylamine in a sample using labelled phenethylamine which competes with unknown phenethylamine in the sample in the detection process (column 4, lines 35-44). Avenia discloses that suitable labeled phenathylamies for assay purposes include radioisotopically labeled phenethylamine. Avenia further discloses that other suitable labels include chromophores, fluorophores, enzymes, latex particle etc. (column 4, lines 47-58). Therefore, applicants assertion that there is no teaching or suggestion in Avenia to use label conjugates is not persuasive. Even though Avenia describes assays using radiolabelled phenethylamines, Avenia suggests other non-radioactive label conjugates suitable for immunoassay detection. Since activated haptens (see formula III) is disclosed by Avenia, one of ordinary skill in the art would easily envision conjugating the label with the activated hapten. In response to applicant's argument that the combined teachings of the references do not disclose or suggest presently claimed labeled conjugate, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See In re Fines, 837 F.2d 1071, 5USPQ2d 1596 (Fed. Cir. 1988) and In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir.1992). In this case, Avenia discloses activated hapten for conjugation to a carrier and also suggested label conjugates with fluorophores, enzymes and latex particle for use in competitive immunoassay and Hui or Rouhani discloses various competitive immunoassay formats for quantitative detection of amphetamine derivatives using antibody against amphetamine (phenethylamine) derivatives and label conjugates. Therefore, since antibody and labelled conjugates are disclosed for phenethylamine , one of ordinary skill in the art would obviously try different immunoassay formats as taught by Hui or Rouhani to develop a better detection assay for the drug because Hui or Rhouhani are also concerned with the immunodetection of phenathylamine in a sample.